



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0227]

RIN 1625-AA00

Safety Zone; Newport Beach Harbor Grand Canal Bridge Construction; Newport Beach, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the waters of the Newport Harbor Grand Canal on Balboa Island. This temporary safety zone is being established to provide for the safety of the waterway users during bridge construction over a 10 month period. Transiting through or within this temporary safety zone is prohibited unless specifically authorized by the Captain of the Port, Los Angeles - Long Beach, or her designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through January 31, 2017. For purposes of enforcement, actual notice will be used from April 4, 2016 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0227 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email BMC James Morgia, Waterways Management, U.S. Coast Guard Sector Los Angeles – Long Beach; telephone (310) 521-3860, e-mail James.M.Morgia@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
LLNR	Light List Number
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” An NPRM is unnecessary and for this regulation because local authorities have already notified boaters not to transit the waterway during bridge construction and the Grand Canal waterway typically only experiences minimal vessel traffic, by small personal pleasure crafts. An NPRM is impractical for this regulation because the Coast Guard did not receive notice of the April 4 construction until March 8, 2016, and the construction schedule cannot be moved. Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause for making this rule effective less than 30 days after publication in the Federal Register.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective without 30 days advanced notice of the rule. Delaying the effective date of the rule is impractical and unnecessary for the same reasons specified above: (1) local authorities have already notified boaters not to transit the waterway during bridge construction, (2) the Coast Guard did not receive notice of the April 4 construction until March 8, 2016, and (3) the Grand Canal waterway typically only experiences minimal vessel traffic, by small personal pleasure craft.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Los Angeles-Long Beach (COTP) has determined that potential hazards, like falling debris and heavy equipment operations in and near the waterway create a serious safety concern for anyone transiting the waterway during construction. This temporary safety zone is necessary to ensure the safety of, and reduce the risk to, the public, and mariners, in vicinity of the Newport Harbor Grand Canal.

IV. Discussion of the Rule

The U.S. Coast Guard is establishing a temporary safety zone on April 4, 2016 to January 31, 2017, encompassing all navigable waters from the surface to the sea floor within the following coordinates: 33°36.311'N 117°53.323'W, 33°36.437'N 117°53.324'W, 33°36.438'N 117°53.343'W, 33°36.312'N 117°53.341'W. All coordinates displayed are referenced by North American Datum of 1983, World Geodetic System, 1984.

This temporary safety zone will be effective from 6:00 a.m. on April 4, 2016, to 11:59 p.m. on January 31, 2017. No vessel or person is permitted to operate in the safety zone without obtaining permission from the Captain of the Port (COTP) or the COTP's designated

representative. Sector Los Angeles – Long Beach may be contacted on VHF–FM Channel 16 or 310-521-3801.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

The implementation of this temporary safety zone is necessary for the protection of all waterway users. The size of the zone is the minimum necessary to provide adequate protection for the waterways users, adjoining areas, and the public. Any hardships experienced by persons or vessels are considered minimal compared to the interest in protecting the public.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C.

605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor within the designated area during the designated enforcement times. This temporary safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) this zone will support the safety of vessel traffic through the area, (ii) this zone is limited in scope and duration, (iii) the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 while the safety zone is enforced.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management

Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T11-772 to read as follows:

§ 165.T11-772 Safety Zone; Newport Beach Harbor Grand Canal Bridge Construction; Newport Beach, CA.

(a) Location. The following area is a safety zone: All navigable waters from the surface to the sea floor within the following coordinates: 33°36.311'N 117°53.323'W, 33°36.437'N 117°53.324'W, 33°36.438'N 117°53.343'W, 33°36.312'N 117°53.341'W. All coordinates displayed are referenced by North American Datum of 1983, World Geodetic System, 1984.

- (b) Definitions. For the purposes of this section:

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Los Angeles-Long Beach (COTP) in the enforcement of the safety zone.

(c) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF-FM Channel 16 or 310-521-3801. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

- (d) Enforcement period. This rule will be enforced from April 4, 2016 to January 31,

2017.

Dated: March 23, 2016.

J. F. Williams.

Captain, U.S. Coast Guard.

Captain of the Port Los Angeles – Long Beach.

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